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FEDERAL COMMUNICATIONS COMMISSION  
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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In re:

Amendment of Section 73.622(b)  
Table of Allotments  
DTV Broadcast Stations  
(Fayetteville, Arkansas)

MM Dkt. No. 01-55  
RM-10034

To: Chief, Allocations Branch  
Policy and Rules Division

**REPLY COMMENTS IN OPPOSITION TO PHARIS BROADCASTING, INC.**

Arkansas Educational Television Commission ("AETN"), the proponent of the proposal, by its attorneys and pursuant to the Commission's Rules, submits these reply comments in opposition to Pharis Broadcasting, Inc. ("Pharis") with respect to the above-referenced rulemaking proceeding.<sup>1</sup> Pharis asserts that the substitution of DTV Channel \*9 for KAFT-TV's allotted DTV Channel \*45 would cause interference to Pharis's Class A Station K09XE, Winslow, Arkansas in contravention of the Community Broadcasters Protection Act of 1999 ("CBPA"). AETN submits that an exception to the CBPA provisions for Class A protection applies here because AETN's DTV channel change is critical for KAFT's DTV replication,

<sup>1</sup> On April 20, 2001, AETN filed a Motion for Extension of Time to File Reply comments in this proceeding based on the fact that AETN's consulting engineer and Director were out of town at the NAB convention from April 23, 2001 through and including April 27, 2001. To date, the FCC has not acted upon this Motion. According to conversations between AETN's FCC counsel and FCC staff, the FCC's policy is not to act on such motions at all. Pursuant to Section 1.46(b) of the FCC's Rules, AETN's Reply comments are not due until two (2) days after the FCC acts on the Motion. Thus, although AETN is filing these Reply comments today, it reserves the right to refile its Reply comments (with additional information added) within two days after the FCC acts on the pending Motion for Extension of Time.

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given AETN's noncommercial educational character and funding limitations. AETN estimates a cost savings of well in excess of \$7,000,000 from this channel change.

Assuming that Pharis's Station K09XE is eligible for Class A status and the interference protection afforded Class A stations, Section 336(f)(1)(D) of the CBPA provides an exception to the protection of Class A facilities to resolve technical problems associated with DTV replication. This provision gives "full-service stations the flexibility to make necessary adjustments to DTV allotment parameters, including channel changes, even after certification of an LPTV station's eligibility for Class A status."<sup>2</sup> Station KAFT's DTV channel change is necessitated by the severe financial hardship that would be inflicted on AETN and taxpayers in the State of Arkansas if AETN is required to activate KAFT's DTV channel on UHF Channel \*45. AETN submits that Section 336(f)(1)(D)'s "technical problems" exception must be interpreted broadly enough to include severe financial difficulty faced by state-owned public broadcasters that threatens DTV replication.

In the *Fifth Report and Order*, the FCC recognized that noncommercial broadcasters may face special funding problems with regard to the DTV transition.<sup>3</sup> The FCC acknowledged the "financial difficulties faced by noncommercial stations" and stated that such stations "need and warrant special relief measures to assist them in the transition to DTV."<sup>4</sup> Thus, the FCC has

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<sup>2</sup> See *In the matter of Establishment of a Class A Television Service, Report and Order*, MM Docket No. 00-10, FCC 00-115 (April 4, 2000).

<sup>3</sup> *In the Matter of Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, Fifth Report and Order*, MM Docket No. 87-268, FCC 97-116 (April 21, 1997)

<sup>4</sup> *Memorandum Opinion and Order on Reconsideration of the Fifth Report and Order*, MM Docket No. 87-268, (Feb. 23, 1998).

recognized repeatedly the enormous costs faced by noncommercial educational broadcasters during the DTV transition and the fact that special relief measures may be warranted.

Accordingly, as in this case, when a state-owned public broadcaster must change its DTV channel to avoid the exorbitant costs associated with operation on its allotted DTV channel to ensure service area replication, the channel change falls within the Section 336(f)(1)(D) exception. This is an appropriate “special relief measure.” Thus, while AETN is not unsympathetic to Pharis’s Class A protection issue, KAFT’s DTV service area replication in a cost-effective manner is of paramount importance here.

AETN provides the only public television service in the State of Arkansas. As the licensee of five (5) noncommercial educational television stations, AETN must convert all five stations to digital and commence DTV operations by May 1, 2003 (which is only two years away). Station KAFT covers the entire Northwest region of Arkansas and portions of Oklahoma and Missouri as well. As a governmental entity supported by funds from the state budget in Arkansas, AETN must be a careful steward of its resources, even while it seeks to make the DTV transition and continue to offer the highest quality of public broadcasting service to citizens in the State of Arkansas.

The allocation of Channel \*45 as KAFT’s DTV channel creates a severe financial obstacle to the achievement of AETN’s DTV transition and public service goals. Substantial hardship will be inflicted upon AETC if it is required to activate its DTV channel on UHF Channel \*45. The increased operational costs of the KAFT DTV facilities on Channel \*45 alone would cost AETN in excess of \$400,000 per year. During the DTV transition, the exact duration which is unknown at this time, AETN estimates that it would cost an additional \$4,000,000 to \$8,000,000 total (not including any increase in energy or maintenance costs) to operate KAFT on

DTV Channel \*45 instead of on Channel \*9. Operation of the KAFT DTV facilities with power levels of 1000 kw as contemplated by the Commission (which is necessary to achieve DTV replication) will result in massive electrical power costs and operating costs.

In addition, initial construction costs necessitated by the construction of this facility on channel \*45 would exceed the costs of construction of a DTV facility on Channel \*9 by more than \$3,000,000. AETN would need to construct a new tower to accommodate the additional loading of a UHF antenna and transmission line. In contrast, if DTV Channel \*9 is utilized, the existing tower could be modified to accommodate the new DTV antenna at a substantially reduced cost. In summary, if AETN is forced to operate KAFT on DTV Channel \*45, the additional operational and construction costs, in total, would be in excess of \$7,000,000 to \$11,000,000. This equates to almost half the total DTV conversion budget for the entire AETN 5-station network. This expense would be especially burdensome in light of the fact that AETN has four additional DTV stations to construct, operate and maintain, all within a short span of time.

KAFT's DTV channel change also furthers Section 396(a)(7) of the Communications Act ("the Act"), which requires the Federal Government to "complement, assist and support a national policy that will most effectively make public telecommunications services available to all citizens of the United States." KAFT's DTV channel change also furthers the Commission's general policies and goals for digital television. The Commission has stated that one of its principle goals is "to provide all eligible television broadcasters with a second channel that, to the extent possible, replicates the service area of their existing stations."<sup>5</sup> Because AETN's DTV

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<sup>5</sup> *Second Memorandum Opinion and Order on Reconsideration of the Fifth and Sixth Report and Orders*, MM Docket No. 87-268, FCC 98-315 (released December 18, 1998).

proposal will help ensure replication of KAFT's NTSC service area in a cost-effective manner, it is consistent, not only with Section 396(a)(7) of the Act, the Commission's objectives for DTV, and Section 336(f)(1)(D) of CBPA, but also with the public interest.

Finally, although AETN submits that it need not protect Station K09XE, AETN is willing to work with Pharis to find a new channel on which Station K09XE can operate its Class A facilities. Assuming the interference protection requirements can be met, K09XE might use Channel \*45 (and have the opportunity to upgrade facilities) if Channel \*9 is allotted to KAFT for its digital facilities. According to AETN's consulting engineer, Dennis Wallace, a study of the channel utilization of the UHF TV band in the Fayetteville area indicates that the existing LPTV station on Channel 45 has been issued a construction permit to change to channel 35. This channel change was granted in anticipation of the LPTV station being displaced by the AETN channel \*45 DTV facility. Thus, the Channel \*45 DTV allocation would provide an excellent replacement channel for Pharis's K09XE. Since, the incumbent LPTV station has already been authorized to change channels, the Pharis station, if it were to change to Channel \*45, would only be limited in service by the LPTV ERP cap of 150KW. AETN believes that this scenario provides Pharis with increased and maximized Class A facilities while providing a cost-effective solution to AETN's government-mandated DTV facility construction for KAFT.

For these reasons and those expressed in AETN's prior *Petition for Rulemaking*, the FCC should reject Pharis's comments and amend Section 73.622(b) of the Commission's Rules to

substitute DTV Channel \*9 in lieu of DTV Channel \*45 as KAFT's paired digital channel in Fayetteville, Arkansas.

Respectfully submitted,

ARKANSAS EDUCATIONAL TELEVISION  
COMMISSION

By: 

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May 1, 2001

**CERTIFICATE OF SERVICE**

I, Brenda Scott, hereby certify that a true copy of the foregoing Reply Comments in Opposition to Pharis Broadcasting, Inc was mailed first-class, postage prepaid, this 1st day of May, 2001 to the following:

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